

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

PEDRO ANTHONY ROMERO CRUZ et al. ,

Defendant.

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Case No.: 1:14cr306-GBL

**JOINT DEFENSE MOTION FOR A NEW TRIAL OR, IN THE ALTERNATIVE,
MOTION TO COMPEL MEANINGFUL PRODUCTION AND IDENTIFICATION OF
STATEMENTS OF THE DEFENDANTS**

Defendants jointly move the Court, pursuant to *Federal Rule of Criminal Procedure 33*, for a new trial based on the government’s failure to meaningfully disclose statements by the defendants, in violation of *Federal Rule of Criminal Procedure 16*. Alternatively, defendants move that all the summaries produced by the Contract Language Monitors of the telephone calls be produced, including the identification of the speakers on those telephone calls, made part of the record and that an evidentiary hearing be held regarding the prior failure to disclose.

The prosecution is required to disclose to a defendant, upon request, any relevant written or recorded statement by the defendant if “the statement is within the government’s possession, custody, or control” and “the attorney for the government knows –or through due diligence could know—that the statement exists.” Fed. R. Crim. P. 16(a)(1)(B)(i).

In this case, the government produced to the defendants over 178 hours of recorded telephone calls in Spanish. The calls were the subject of a wiretap, wherein a government informant (“Junior”) made recorded telephone calls with the defendants in this case. The calls,

therefore, were recorded statements by a defendant that were within the government's possession. Further, because the confidential informant was working under the direction of the FBI, the telephone conversations were being monitored and the FBI employed Contract Language Monitors to listen to the conversations and produce summaries (in English) of those conversations. Additionally, the FBI/Contract Language Monitors consulted the confidential informant and, with his help, identified the speakers on the telephone calls.

Despite the government having within its control the English summaries of statements by the defendants, it turned over to the defendants only Spanish speaking, unidentified recordings totaling over 178 hours. The recordings were often of poor quality and the government never identified what defendant made what statement.

Prior to trial, the defendants requested the government disclose any and all transcripts of the recordings/telephone calls and requested the government identify the speakers on the recorded telephone calls. The government refused. However, at no time did the government reveal that it had enlisted Contract Language Monitors who listened around the clock to the wiretap and produced simultaneous summaries in English of the defendants' recorded statements.

While this Court allowed the defendants a budget to enlist the services of an interpreter to aid in the review of the telephone calls, this task was impossible given the hours of telephone calls, the poor quality of the recordings, and lack of insight about the nature of the calls.¹

In the alternative, Defendants move to compel disclosure of the summaries of all of the recorded statements of the defendants, and for an evidentiary hearing on this motion for a new trial.

¹ FBI Agent Fernando Uribe was working closely with the confidential informant ("Junior") and both he and the informant were able to aid the Contract Language Monitors with both the substance of the calls, as well as identification of the speakers.

WHEREFORE, Defendants respectfully requests that the Court grant the foregoing motion in the interests of justice.

Respectfully submitted,

ALVIN GAITAN BENITEZ
By Counsel

/s/

Amy L. Austin, Esquire
Virginia State Bar No. 46579
Counsel for Defendant Alvin Gaitan Benitez
The Law Office of Amy L. Austin, PLLC
101 Shockoe Slip, Suite O
Richmond, Virginia 23219
Telephone Number: (804) 343-1900
Facsimile Number: (804) 343-1901
Email Address: amyaustinlawyer@gmail.com

/s/

Jeffrey Zimmerman, Esquire
Virginia State Bar No. 38858
Counsel for Defendant Alvin Gaitan Benitez
Smith & Zimmerman, PLLC
108 N. Alfred Street
Alexandria, VA 22314
Telephone Number: (703) 548-8911
Facsimile Number: (703) 548-8935
Email Address: www.zimpacer.com

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 2015, a true and accurate copy of the foregoing was electronically filed and served via the Court's CM/ECF system to all counsel of record.

/s/

AMY L. AUSTIN